

REMARKSRejections Under 35 U.S.C. § 102

Claims 1, 4-5, 8, 12, 18-19, 21 and 40-43 were rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Konefal et al. (U.S. Patent 6,039,195). Applicant traverses this rejection. First, the Office Action does not provide a *prima facie* case of anticipation. In fact, all the Office Action seems to do is to recite a general disclosure of what is allegedly present in Konefal et al. There is no reference whatsoever to any of the actual elements of Applicant's claims. There has been no attempt made to point out where each and every element of the claims is present in Konefal et al. Absent that, Applicant cannot even create a reasoned response to the Office Action, since there is nothing to which Applicant can respond.

However, Applicant further submits that Konefal et al. does not contain each and every element of the present claims. Specifically, claim 1 recites in part "a threaded cap having a non-circular cap flange; and a threaded vessel having a non-circular vessel flange of substantially the same shape as the cap flange, wherein the threaded cap is secured to the threaded vessel when the cap flange and vessel flange are aligned." There is no mention in the Office Action or Konefal et al. of "a threaded cap with a non-circular flange" nor is there any mention of "a non-circular vessel flange of substantially the same shape as the cap flange," both of which are required by claim 1. Further, Figures 2 and 3 show "the enclosure on the container" (see col. 2, l. 59). From these figures, it is clearly evident that the closure 26 has no flange that is substantially the same shape as the flange 50 on the container 20.

Claim 18 recites in part "placing a threaded cap having a non-circular cap flange on a threaded vessel having a corresponding non-circular vessel flange; and securing the threaded cap to the threaded vessel a first time by rotating the threaded cap in one direction, the threaded cap secured to the threaded vessel when the cap flange and vessel flange are aligned." There is no mention in the Office Action or Konefal et al. of these elements. There is no "alignment" of corresponding flanges on the closure 26 and the container 20 of Konefal et al.

Claim 40 recites in part “a threaded cap having a cap flange; and a threaded vessel having a vessel flange of substantially the same shape as the cap flange, wherein the threaded cap is secured to the threaded vessel after being rotated in one direction approximately 180 degrees or less.” There is no mention in the Office Action or Konefal et al. of “a threaded vessel having a vessel flange of substantially the same shape as the cap flange” as is required in claim 40. See the discussion of claim 1 above for further argument, which is incorporated in its entirety here, but not repeated for the purposes of brevity.

Still further, with respect to all of the claims, it is noted that Konefal et al. is directed to a child resistant capping system for a bottle. Many of the specific elements of Konefal et al. which are required to be present therein are not present in the claims of the present application, nor are they necessary. In fact, the claims of the present application are directed to a simpler design. Among the elements required by Konefal et al. but not present in the claims of the present application are “stop means,” “release element” “lug portion,” and a different torque required for removing the cap than for tightening the cap. Such elements, being required for the functionality of Konefal et al., cannot be ignored, but must be analyzed. The lack of these elements in the present claims makes them simpler. It is unacceptable to ignore required elements of Konefal et al. when analyzing Konefal et al. Konefal et al. would require substantial modification to serve the purpose and to meet the elements of the present claims.

Claims 4-5, 8, 12, 19, 21, and 41-43 depend from and further define patentably distinct claims 1, 18, Or 40 and are also believed allowable.

Rejections Under 35 U.S.C. § 103

Claims 1-9, 12, 18-22 and 40-47 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Konefal et al. in view of Long Jr. (U.S. Patent 5,673,222). Applicant traverses this rejection. Applicant incorporates its arguments presented above with respect to the rejections under 35 U.S.C. § 102(b). The same general discussion of what Konefal et al. and Long Jr. disclose is repeated in even more brief notes in the rejection under 35 U.S.C. § 103(a). Once again, the Office Action provides no specifics as to how

the references contain the subject matter of the claims. In order to present a prima facie case under 35 U.S.C. § 103, among the things the Office Action must show is the presence of each and every element of the claims in the references. This has not been done. The lack of a showing of the elements of claims 1, 18, and 40 has been presented above. The arguments set forth above with respect to claims 1, 18, and 40 apply equally here. Since no attempt has been made to point out the elements of the claims, and since the references, either taken alone or in combination, do not contain each and every element of the claims. As such, the rejection is improper.

Still further, modification of the thread pattern of Konefal et al., since the threads appear to be integral to the operation of the closure and container, would destroy the functionality of Konefal et al. As such, it is improper to combine Long Jr. with Konefal et al., since to do so would both require substantial modification of Konefal et al., and would destroy its functionality.

Claims 2-9, 12, 19-22, and 41-47 depend from and further define patentably distinct claims 1, 8, or 40, and are also believed allowable.

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Serial No. 09/420,965

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Title: MIXING AND POURING APPARATUS AND VESSEL THEREFOR

CONCLUSION

In view of the above remarks, Applicant respectfully submits that all of the claims are in condition for allowance and requests reconsideration of the application and allowance of the claims.

The Examiner is invited to contact Applicant's representative at direct dial (612) 312-2203 if there are any questions regarding this response or if prosecution of this application may be assisted thereby.

Respectfully submitted,

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Daniel J. Polglaze
Reg. No. 39,801

Attorneys for Applicant
Leffert Jay & Polglaze, P.A.
P.O. Box 581009
Minneapolis, MN 55458-1009
telephone: (612) 312-2200
facsimile: (612) 312-2250